

Remarks

This Application has been carefully reviewed in light of the Final Office Action mailed January 11, 2007 and the Advisory Action mailed April 10, 2007. Although Applicant believes all claims are allowable without amendment, to advance prosecution Applicant has made clarifying amendments to independent Claims 1, 13, and 25. Additionally, the Advisory Action indicated that amendments made to Claims 19-24 in the Applicant's Response dated March 13, 2007 (which were made to correct a typographical error in each of those claims) would be entered *for purposes of Appeal*. To ensure that those amendments are entered for all purposes, Applicant resubmits those amendments in the present Response. At least certain of these amendments are not considered narrowing or necessary for patentability. Applicant respectfully requests reconsideration and allowance of all pending claims.

I. Applicant's Claims are Allowable over Tsuchiya

The Examiner rejects Claims 1-4, 13-16, 25, and 34 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent 7,051,173 to Tsuchiya, et al. ("*Tsuchiya*"). Applicant respectfully disagrees and discusses independent Claims 1 and 34 as examples.

"A claim is anticipated only if *each and every element as set forth in the claim* is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added); M.P.E.P. § 2131. In addition, "[t]he identical invention must be shown in *as complete detail as contained in the . . . claim*." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (emphasis added); *see also* M.P.E.P. § 2131. Furthermore, "[t]he elements must be arranged *as in the claim* under review." *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990) (emphasis added); M.P.E.P. § 2131. As illustrated below, *Tsuchiya* does not appear to disclose, either expressly or inherently, each and every limitation recited in Applicant's independent claims, as is required under the M.P.E.P. and governing Federal Circuit cases.

A. Independent Claim 1 is Allowable

Independent Claim 1, as amended, recites:

A serverless backup system for backing up information on a network including one or more servers, comprising:

a storage system for storing information to be backed up and restored, the storage system operable to:

receive the information from a plurality of workstations; and
store the information received from the plurality of workstations; and

a backup storage system for backing up the information, the backup storage system coupled to the storage system and to one or more servers via a network, wherein the information being backed up is transferred directly from the storage system to the backup storage system without going through the one or more servers and information being restored is transferred directly from the backup storage system to the storage system without going through the one or more servers.

Applicant respectfully submits that the cited portions of *Tsuchiya* does not appear to disclose, teach, or suggest each and every limitation recited in amended Claim 1.

For example, Applicant submits that the cited portions of *Tsuchiya* do not appear to disclose, teach, or suggest the storage system and the backup storage system of Claim 1. In the Advisory Action, the Examiner references Fig. 32 of *Tsuchiya* and argues that “the storage system corresponds to computer 11” and “the backup storage system corresponds to backup medium.” (Advisory Action, Continuation Sheet) Additionally, the Examiner states that in *Tsuchiya* “the backup data is transferred directly from the backup medium 15 to the computer 11 . . . without going through a server,” citing Fig. 32. (Advisory Action, Continuation Sheet) Applicant respectfully submits that computer 11 of *Tsuchiya* cannot be equated with the storage system of Claim 1 at least because the cited portions of *Tsuchiya* fail to disclose, teach, or suggest that computer 11 receives information (to be backed up and restored) from a plurality of workstations and stores the information received from the plurality of workstations like the storage system recited in Claim 1.

Additionally, Applicant respectfully submits that backup medium 15 of *Tsuchiya* cannot be equated with the backup storage system of Claim 1 at least because the cited portions of *Tsuchiya* fail to disclose, teach, or suggest that backup medium 15 is coupled to the storage system and to one or more servers via a network, as recited in Claim 1. Moreover, at least because the cited portions of *Tsuchiya* fail to disclose, teach, or suggest the storage system and the backup storage system recited in Claim 1 as amended, the cited portions of *Tsuchiya* necessarily fails to disclose, teach, or suggest that “the information being backed up is transferred directly from the storage system to the backup storage system

without going through the one or more servers and information being restored is transferred directly from the backup storage system to the storage system without going through the one or more servers,” as recited in Claim 1 as amended.

The Examiner also cites Figure 17 of *Tsuchiya* as allegedly disclosing the limitations of Claim 1. In particular, the Examiner argues that “the storage system can be [equated] with sharing disk 13” and that “the backup storage system can be [equated] with backup medium [15].” (Advisory Action, Continuation Sheet) Additionally, the Examiner states that in *Tsuchiya* “the copy management unit copies data from sharing disk 13 to the backup medium . . . without going through the server.” (Advisory Action, Continuation Sheet) Applicant respectfully submits that sharing disk 13 of *Tsuchiya* cannot be equated with the storage system of Claim 1 at least because the cited portions of *Tsuchiya* fail to disclose, teach, or suggest that sharing disk 13 receives information (to be backed up and restored) from a plurality of workstations and stores the information received from the plurality of workstations like the storage system recited in Claim 1.

Additionally, Applicant respectfully submits that backup medium 15 of *Tsuchiya* cannot be equated with the backup storage system of Claim 1 at least because the cited portions of *Tsuchiya* fail to disclose, teach, or suggest that backup medium 15 is coupled to the storage system and to one or more servers via a network, as recited in Claim 1. Moreover, at least because the cited portions of *Tsuchiya* fail to disclose, teach, or suggest the storage system and the backup storage system recited in Claim 1 as amended, the cited portions of *Tsuchiya* necessarily fails to disclose, teach, or suggest that “the information being backed up is transferred directly from the storage system to the backup storage system without going through the one or more servers and information being restored is transferred directly from the backup storage system to the storage system without going through the one or more servers,” as recited in Claim 1 as amended.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of amended independent Claim 1 and its dependent claims. For at least certain analogous reasons, Applicant respectfully requests reconsideration and allowance of amended independent Claims 13 and 25 and their dependent claims.

B. Independent Claim 34 is Allowable

Independent Claim 34 recites:

A serverless backup method comprising:
opening a file system root directory;
parsing the file system root directory for allocation tables of each file
and finding attributes of each file;
examining the attributes of each file and determining whether a file is
resident or non resident;
backing up entire attributes of a file if it is determined that the file is
resident; and
backing up attributes and data blocks belonging to the file if it is
determined that the file is non resident.

Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest each and every limitation recited in Claim 34.

For example, Applicant respectfully submits that the portions of *Tsuchiya* that the Examiner cites in the Advisory Action fail to disclose, teach, or suggest the limitations of Claim 34. The Examiner apparently cites a portion of *Tsuchiya* that discloses a user's ability to set groups of files (e.g., assigning all the files of directories A and C to a group, while eliminating the files of directory D from the group). Even assuming for the sake of argument only (and not by way of concession) that the determination in *Tsuchiya* of which files belong to a group can be equated with examining the attributes of each file and determining whether a file is resident or non resident (as recited in Claim 34), nowhere do the cited portions of *Tsuchiya* disclose, teach, or suggest "backing up entire attributes of a file if it is determined that the file is resident" and "backing up attributes and data blocks belonging to the file if it is determined that the file is non resident," as recited in Claim 34. For example, even according to the Examiner's apparent equations, *Tsuchiya* still fails to disclose, teach, or suggest backing up entire attributes of a file if it is determined that the file is in a particular group and backing up attributes and data blocks belonging to the file if it is determined that the file is not in a particular group.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 34.

II. The Separately Rejected Dependent Claims are Allowable over the Proposed Combinations

The Examiner rejects Claims 5, 17, and 26 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of U.S. Patent 6,728,848 to Tamura, et al. ("*Tamura*"). The Examiner rejects Claims 6-7, 18-19, and 27-28 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of U.S. Patent 6,081,875 to Clifton, et al. ("*Clifton*"). The Examiner rejects Claims 8-9, 20-21, and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of *Clifton* and U.S. Patent 6,785,786 to Gold, et al. ("*Gold*"). The Examiner rejects Claims 10-12, 22-24, and 31-33 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of *Clifton* and U.S. Patent 6,738,923 to Blam, et al. ("*Blam*").

Dependent Claims 5-12, 17-24, and 26-33 depend from independent Claims 1, 13, and 25, respectively, which Applicant has shown above to be allowable over *Tsuchiya*. It does not appear that the references cited by the Examiner to reject dependent Claims 5-12, 17-24, and 26-33 make up for the above-discussed deficiencies of *Tsuchiya*. Thus, dependent Claims 5-12, 17-24, and 26-33 are allowable at least because they depend from allowable independent claims. Additionally, dependent Claims 5-12, 17-24, and 26-33 recite further patentable distinctions over the various references cited by the Examiner. To avoid burdening the record and in view of the clear allowability of independent Claims 1, 13, and 25, Applicant does not specifically discuss these distinctions in this Response. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Moreover, Applicant does not admit that the proposed combinations of references are possible or that the Examiner has demonstrated the required teaching, suggestion, or motivation to combine these references.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claims 5-12, 17-24, and 26-33.

III. No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss

these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

Conclusion

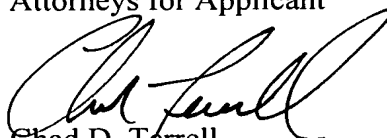
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

The Commissioner is hereby authorized to charge the amount of \$790.00 to Deposit Account No. 02-0384 of Baker Botts L.L.P. to cover the cost of the RCE fee. Additionally, the Commission is hereby authorized to charge the amount of \$450.00 to Deposit Account No. 02-0384 of Baker Botts L.L.P. to cover the cost of a two-month extension-of-time fee. Although no other fees are believed due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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